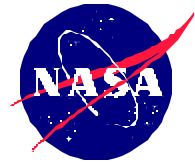


National Aeronautics and  
Space Administration

**Goddard Space Flight Center**  
Greenbelt, MD 20771



Reply to Attn of: 210

June 23, 2000

TO: NASA Headquarters  
Attn: W/Inspector General

FROM: 100/Director

SUBJECT: Office of Inspector General (OIG) Draft Reply to Chairman Sensenbrenner —  
Johns Hopkins University (JHU) / Applied Physics Laboratory (APL) Non-  
Competitive Award — Sun-Earth Connection (SEC) Theme Including Living  
With a Star

Thank you for the opportunity to provide comments on your draft response to Chairman Sensenbrenner. It is unfortunate, however, that we were not provided the opportunity to meet with Mr. Cushing beforehand, since I strongly believe that the conclusions reached by the OIG are inaccurate and directly attributable to the process used. What would normally be viewed as preliminary fact-finding through individual interviews is serving as the complete, final basis for responding to the Chairman. Mr. Cushing's willingness to include our response in the submittal to the Chairman does enable NASA to address what we believe are these inaccuracies and inconsistencies, and again, we do appreciate that opportunity.

A clear point that needs to be made in the final report is that while the results of the interviews by the OIG did not uncover sufficient justification for other than full and open competition, that does not mean the justification does not exist. We believe the justification does exist. Mr. Cushing and I discussed this particular matter earlier this week.

Another point that I believe is important to acknowledge is the fact that Goddard did follow the process required by the FAR for public scrutiny by interested parties. We synopsisized our intent to award work to APL, considered and addressed comments submitted by interested parties.

I would like to clarify some points that we believe help establish the appropriateness of our intent to award a contract to APL without competition. Also, some of the comments made during the interviews, which are reported in your draft response, are not used in the appropriate context. I want to explain this as well. Please be assured that before a Justification for Other than Full and Open Competition is finally approved, any additional information necessary to justify our intent will be fully addressed.

## **Separation of Processes**

Part of the confusion resulting from the independent interviews is the way two separate but related processes have been commingled; specifically, program/procurement definition and procurement method. I offer the following explanation.

### **Program/Procurement Definition**

First, for any program undertaken by NASA, program definition must be prepared. NASA then determines how to implement that program. Consideration is given to the availability and extent of civil service resources, and whether those resources can and/or should be used. Where NASA determines that civil service performance is either not possible or practical, performance must then be external to NASA and NASA must define the scope of that "procurement." We define a procurement in the context of a particular program and consider the most strategic and efficient implementation of that program. Consideration is given to whether the procurement should involve substantial government oversight and direction, and the risks associated with these decisions. As you know, NASA and Goddard strive for performance based contracts so that we can then hold our contractors responsible and accountable for the program success.

In this case, the lack of available civil servants requires a contract that enables the contractor as much responsibility and accountability as possible. Our need is to minimize the government oversight and coordination required. The most strategic and efficient implementation of the SEC program is the one being pursued and that includes a long-term contract with APL, not a combination of multiple contracts and contractors. This entire definition exercise is a normal, usual and necessary process of determinations in program planning, which the Agency undertakes time and time again. The draft report suggests otherwise, and this is not accurate.

### **Method of Procurement**

Once Goddard determines that it will contract, several key factors are considered. One of the major factors is whether there should be competition. In that respect, NASA examines all avenues available to it, as well as issues such as whether a non-competitive source is capable of successful performance of that requirement and whether the procurement serves NASA's (not Navy's) interest in maintaining essential capabilities. Contrary to what is stated in the draft report, Goddard did consider other avenues and other approaches.

It seems fairly evident that when interviewees were asked about essential capabilities of APL, they either answered why we had to contract with APL or why APL could do the job. The responses are valid if used in the proper context. They do speak to the considerations surrounding Program/Procurement Definition and Method of Procurement. But as you point out, they do not specifically support the "maintaining essential capability" justification. That again, does not mean that the justification does not exist. I would appreciate you considering the essential capabilities NASA requires to be maintained in your final response. For convenience, they are summarized below.

## **Essential Capabilities**

The FAR describes the following areas of essential capabilities which may be maintained by non-competitive award:

**FAR 6.302-3(b)(2)(i):** theoretical analyses, exploratory studies and science or technology experiments

**FAR 6.302-3(b)(2)(ii):** engineering or developmental work calling for the practical application of investigative findings and theories of a scientific and/or technical nature

**FAR 6.302-3(b)(2)(iii):** supplies and/or services incident to the areas noted above

The following are the work/functions which we require be performed by APL under the FAR categories noted above:

3(b)(2)(i): Miniaturization of spacecraft components and development of radiation tolerant spacecraft components; integration of mission science objectives; development of design concepts to satisfy science requirements; development of centralized integration of electronic components for resources reduction such as weight, power and volume; development of constellation management tools and processes entailing multi spacecraft simultaneous control.

3(b)(2)(ii): Concept designs entailing comparative analysis, design, fabrication, assembly and test of instruments and spacecraft to meet science requirements; expertise in engineering disciplines such as mechanical, electrical, structural, thermal, software, navigation, command and data handling, RF communications, attitude determination and control, and propulsion engineering; system engineering to establish end to end system design, interface definitions and ground system and mission operation definition;

3(b)(2)(iii): pre-formulation studies and project management expertise in preparation for the above described work

Another suggestion that is made in the draft report is that even if you had, in fact, confirmed through the interview process, that our rationale for maintaining essential capabilities was proper, you would still suggest that the work to APL should be defined only to maintain what is minimally essential and then only when their continuation is in serious jeopardy. I would like to make four points.

First, the type of requirements described by NASA above and the type of capabilities recognized in the FAR, cannot be turned on and off quickly, nor continued only at such a point as the capabilities are close to being under-maintained. Instead, what must be determined in using this authority is whether without "this" award maintenance of capabilities essential to NASA over the long term could be jeopardized.

Second, the capability that is critical to NASA at APL is that which is available for NASA work, not for Navy work. During interviews, I understand that we did attempt to point out that APL's history shows a diminution of work that impacts NASA. That trend is ominous for the future without this action. All NASA missions currently assigned to APL will have been launched by Fiscal Year 2004.

Third, the requirement being placed by NASA may result in additional staffing requirements by APL. However, after properly defining our needs, we have an obligation to ensure that the procurement is a) used to ensure the essential capabilities over the period of time defined; and b) likely to be successfully performed. NASA has taken a step to provide for long-term assurance of these capabilities over a 12-year period as opposed to a more piece-meal approach which has been followed in the past. This 12-year period also supports the programmatic need and enables us to hold APL accountable.

Finally, we completely agree that staffing levels do not, in themselves, measure essential capabilities. However, stability is important, and we are developing a metric of staffing levels, readily visible by NASA and APL, to help maintain a long-term stability such that APL experiences neither unreasonable growth nor reductions to levels below that required to maintain essential capability. This is intended to be an extra means to enable NASA to take precautions not required, which has now been confused by the OIG as part of our definition and a failure to derive an adequate explanation of the essential capabilities. This is not the case.

In summary of the above points and comments, I want to reiterate that the draft reply to the Congressman does not paint a complete picture and in many cases, misconstrues relevant information and facts. I cannot help but think that this is due, in large part, to the process used. As a final note, the OIG's concern about the lack of Cost/Benefit Analysis is being reviewed. It is not clear to us that the internal process NASA adopted is applicable to this procurement action. NASA, in fact, has a long and recent history of cost and technical performance by APL, which is available and is being considered for this procurement. However, we will determine if a formal analysis is required, and if so, we will satisfy this requirement.

Please call me if you would like to discuss making any changes to the draft report.

*[Original signed by Alphonso V. Diaz]*

A.V. Diaz